

| Compliance History Components/Definitions | |
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| Issue No. | 1 |
| Key Issue | <p><u>The nature of notices of violation considered in compliance history:</u></p> <p>A) Should compliance history be based on notice of enforcement (NOE) instead of notice of violation (NOV)?</p> <p>B) Should all NOV's be included as components, including resolved NOV's and verbal NOV's?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment, Steering Committee Input</p> |
| Other Subcommittees Reviewing Issue | Compliance Evaluation and Response |
| Recommendation | <p>All NOV's and NOE's should be considered as components of compliance history, regardless of whether they are resolved or not. Verbal NOV's would not be included.</p> <p><u>30 TAC § 60.1(c)(7) and TWC § 5.753(d) would need to be revised to incorporate NOE's.</u></p> <p><u>Pros:</u> Incorporates those violations which require automatic enforcement action and are only reflected in NOE's into compliance history.</p> <p><u>Cons:</u> Violations contained in unresolved or multiple NOV's which result in an NOE could potentially be counted three times in compliance history (NOV, NOE, Agreed Order). This should be addressed in the revisions to the compliance history classification process.</p> <p><u>Basis:</u> Violations which result in the issuance of an NOE are deemed more significant in nature and demonstrate the severity of the situation.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories utilizing all NOV's and NOE's while incorporating the recommended revised policies, rules, and procedures • 30 TAC § 60.1(c)(7) and TWC § 5.753(d) would need to be revised • Rulemaking takes approximately six to nine months; assuming initiation in the Fall of 2004, the rule could be adopted by May 2005 • Allocation of additional agency staff may be required to revise rule; hold stakeholder meetings, etc. • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • Potential impact to a company's compliance history • This recommendation will potentially impact other agency offices and/or contractors for implementation |
| Other Alternatives | None. |

| Compliance History Components/Definitions | |
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| Issue No. | 1 |
| Key Issue | <p><u>The nature of notices of violation considered in compliance history:</u></p> <p>C) Should self-reported violations be included as a component?</p> <p>D) Should discharge monitoring reports (DMRs) be included in compliance history? If so, should there be consideration to not include DMRs for non-profit facilities?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment, Steering Committee Input</p> |
| Other Subcommittees Reviewing Issue | Compliance Evaluation and Response |
| Recommendation | <p>A self-reported violation should be included as a component of compliance history once it is captured in the form of an agency-issued NOV/NOE, except for violations qualified for immunity under the Texas Audit Privilege Act. Violations disclosed in a report required to be submitted by the regulated community to the TCEQ or EPA by a regulatory rule or statute should not be defined as a "NOV" for compliance history purposes, or become a component of compliance history, until the TCEQ or EPA takes action upon the report pursuant to the relevant Strategic Plan. For example, violations self-reported on DMR or Title V reports would not be included in a person's or site's compliance history until acted upon by the TCEQ or the EPA.</p> <p>Similarly, investigations, if included as a component of compliance history, should be limited to action taken by the TCEQ to investigate a complaint or potential violation pursuant to the Strategic Plan. Reports required to be submitted to the TCEQ by the regulated community pursuant to regulatory rule or statute should not be defined as an "investigation" and included as a component of compliance history.</p> <p>Non-profit facilities should not be treated differently than for profit facilities with regard to the inclusion of self-reported violations in compliance history because there is no difference between the impact a non-profit facility's violation has on human health and/or the environment and the impact a for profit facility's violation has.</p> |

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| | <p><u>Only agency policy changes would be required.</u></p> <p><u>Pros:</u> Provides a complete picture of a company's environmental record; reduces the number of NOV's that are currently counted towards compliance history since these violations would be incorporated into an agency-issued NOV/NOE; would also eliminate the necessity to make adjustments to penalties.</p> <p><u>Cons:</u> This could negatively impact a non-profit facility's compliance history and result in an upward adjustment in penalties calculated in a formal enforcement action.</p> <p><u>Basis:</u> Currently, self-reported violations submitted on monthly DMRs are considered as NOV's for all types of facilities. If these violations result in an enforcement action, an adjustment has to be made to the penalty so the NOV's don't overly impact the penalty amount.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using self-reported violations with the recommended revised policies, rules, and procedures • Revision to agency policy would be required • Revising agency policy takes approximately three months; assuming initiation in the Fall of 2004, the policy could be implemented by January 2005 • Allocation of additional agency staff will not be required • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • Potential impact to a company's compliance history • This recommendation will potentially impact other agency offices and/or contractors for implementation |
| Other Alternatives | None. |
| Notes | Self-reported violations should be handled differently with regard to penalty policy issues. |

| Compliance History Components/Definitions | |
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| Issue No. | 1 |
| Key Issue | <u>The nature of notices of violation considered in compliance history:</u> |
| | E) Should there be a threshold for violations/NOV's before they are counted in compliance history? |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment, Steering Committee Input |

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| Other Subcommittees Reviewing Issue | Compliance Evaluation and Response |
| Recommendation | <p>There should not be a threshold established for violations/NOVs.</p> <p><u>No policy or regulation changes are required.</u></p> <p><u>Pros:</u> All violations, regardless of their nature, would be considered in a company's compliance history, providing a complete picture of a company's environmental record.</p> <p><u>Cons:</u> All violations would be included in compliance history, regardless of the severity of the situation.</p> |
| | <p><u>Basis:</u> Some discretion for determining if a violation exists is already built in during the inspection phase. In addition, a type of "threshold" currently exists with the classification of violations included in compliance histories (i.e. the violations are classified as either major, moderate, or minor and are, accordingly, scored differently).</p> |
| | <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories implementing the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| Other Alternatives | Include a threshold for violations/NOVs for compliance history. |
| Notes | This is more of a classification issue and would best be addressed in the classification committee. |

| Compliance History Components/Definitions | |
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| Issue No. | 1 |
| Key Issue | <p><u>The nature of notices of violation considered in compliance history:</u></p> <p>F) Should new or one-time violations be included in compliance history?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment, Steering Committee Input</p> |

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| Other Subcommittees Reviewing Issue | Compliance Evaluation and Response |
| Recommendation | <p>New and one-time violations should count as components of compliance history.</p> <p><u>No policy or regulation changes are required.</u></p> <p><u>Pros:</u> These violations indicate a company's ability to comply with environmental regulations.</p> <p><u>Cons:</u> All violations would count towards compliance history with no exceptions.</p> <p><u>Basis:</u> These violations set the basis for determining repeat violations.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories based on policies, rules, and procedures currently in place • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| Other Alternatives | <p>Do not count new or one-time violations as a component of compliance history.</p> <p><u>Pros:</u> Improves the compliance history rating for the site.</p> <p><u>Cons:</u> The new or one-time violation could be significant in nature with actual or potential impact to human health or the environment. In addition, a determination would have to be made regarding the point in time in which the compliance history period begins again (i.e. one “free” violation every five years).</p> |

| Compliance History Components/Definitions | |
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| Issue No. | 1 |
| Key Issue | <p><u>The nature of notices of violation considered in compliance history:</u></p> <p>G) Should there be a mechanism to remove NOVs that have been issued by mistake because of insufficient or incorrect information?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment, Steering Committee Input</p> |
| Other Subcommittees Reviewing Issue | Compliance Evaluation and Response |

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| Recommendation | A mechanism for removing invalid violations should and does exist. |
| | <u>No policy or regulation changes are required.</u> |
| | <u>Pros:</u> Removing NOV's issued in error would provide a more complete and accurate portrayal of a company's environmental record and would prevent enhancements associated with incorrect information being applied to penalties. <u>Cons:</u> None |
| | <u>Basis:</u> 30 TAC ch. 60 and TWC § 5.753 currently allow for this process to take place. Violations can be withdrawn through the appeals process and from the Consolidated Compliance and Enforcement Database System (CCEDS) which is the source compliance histories are compiled from. |
| Other Alternatives | <u>Implementation Impacts:</u> <ul style="list-style-type: none"> • Proceed developing compliance histories using the policies, rules, and procedures currently in place • Additional allocation of funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| | None. |

| Compliance History Components/Definitions | |
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| Issue No. | 1 |
| Key Issue | <u>The nature of notices of violation considered in compliance history:</u> |
| | H) Should alleged violations and administrative errors be included in compliance history? |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment, Steering Committee Input |
| Other Subcommittees Reviewing Issue | Compliance Evaluation and Response |

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| Recommendation | Alleged violations and administrative violations <u>contained</u> in NOV, NOEs, and 1660-styled orders should be included in compliance history. |
| | <u>No policy or regulation changes are required.</u> |
| | <u>Pros:</u> These types of violations reflect a company's performance in maintaining compliance with environmental regulations. <u>Cons:</u> Alleged violations and administrative violations can be denied by a company and do not carry the same weight as an admission (i.e. findings of fact) |
| | <u>Basis:</u> The majority of violations issued by the agency are alleged and are currently included in compliance histories as components. |
| Other Alternatives | <u>Implementation Impacts:</u> <ul style="list-style-type: none"> • Proceed developing compliance histories using the policies, rules, and procedures currently in place • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| | Only include violations based on valid and legitimate information and proven offenses. |

| Compliance History Components/Definitions | |
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| Issue No. | 2 |
| Key Issue | <u>Definition of investigations by the TCEQ for compliance history purposes:</u> |
| | A) Should site assessments, file and record reviews, and compliance investigations be included in compliance history? |
| | D) If all enforcement actions are considered, should their associated inspections and record reviews be counted? If yes, would this include e-mail and phone inspections? |
| Other Subcommittees Reviewing Issue | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| | Compliance History Classification, Compliance History Use, Enforcement Process, EIC |

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| Recommendation | <p>Site assessments, file and record reviews, and compliance investigations should be included in compliance history assessment. Information exchanged through email and phone conferences should be included in a final investigation/record review reports. These would not count as separate investigations.</p> <p><u>No policy or regulation changes are required.</u></p> <p><u>Pros:</u> This is consistent with the current process for compiling compliance histories. <u>Cons:</u> A company could be rated more favorably due to the inclusion of these components.</p> |
| | <p><u>Basis:</u> Including investigations provides a complete perspective of activity at a company's site.</p> |
| | <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
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| Other Alternatives | <p>Only include certain types of inspections, for example, compliance investigations and not file or record reviews since these do not involve site visits.</p> |

| Compliance History Components/Definitions | |
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| Issue No. | 2 |
| Key Issue | <p><u>Definition of investigations by the TCEQ for compliance history purposes:</u></p> <p>B) Should DMRs count as an inspection?</p> |
| | <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment</p> |
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| Other Subcommittees Reviewing Issue | <p>Compliance History Classification, Compliance History Use, Enforcement Process, EIC</p> |

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| Recommendation | <p>This is partially covered under recommendations for Key Issue A-1(D) where self-reported violations would be included in compliance history if they result in the issuance of an NOV. DMRs should only be included as an inspection of compliance history if they are captured in the form of an agency conducted record/file review or investigation.</p> <p><u>Only agency policy changes would be required.</u></p> <p><u>Pros:</u> Including DMRs in agency conducted file reviews/investigations would be consistent with the review of other types of required reports and records. In addition, DMRs and other reports submitted by companies are not true investigations as there is no involvement on the agency's part.</p> <p><u>Cons:</u> This would reduce the number of investigations (denominator in calculation) in a compliance history, resulting in a higher site score. This would also create a negative impact on small businesses.</p> <p><u>Basis:</u> DMRs are currently considered as individual investigations in compliance history which positively impacts a company's rating.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using self-reported violations with the recommended revised policies, rules, and procedures • Revision to agency policy would be required • Revising agency policy takes approximately three months; assuming initiation in the Fall of 2004, the policy could be implemented by January 2005 • Allocation of additional agency staff will not be required • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • Potential impact to a company's compliance history • This recommendation will potentially impact other agency offices and/or contractors for implementation |
| Other Alternatives | Continue to count the submission of these reports as individual investigations. |
| Notes | See Attachment B-Strategic Protocol. |

| Compliance History Components/Definitions | |
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| Issue No. | 2 |
| Key Issue | <p><u>Definition of investigations by the TCEQ for compliance history purposes:</u></p> <p>C) Are investigations being defined in a fair and consistent manner?</p> |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |

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| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, EIC |
| Recommendation | <p>Investigations are not defined in a consistent manner because an "investigation" is used differently in the compliance history context than it is defined by the regional office strategic protocol. The Agency's Regional Offices observe a strategic protocol that specifically defines what constitutes an "investigation".</p> <p>Recommendation is to promote consistency by re-defining the compliance history definition of "investigation" so that it mirrors the definition of "investigation" set forth in the strategic protocol used by the regional offices.</p> <p>1) No policy or regulation changes would be required with regard to the definition and application of investigations at the regional level.</p> <p>2) Only agency policy changes would be required to change the definition of investigations with respect to compliance history to mirror the definition used in the Regional Office Strategic Protocol.</p> <p><u>Pros:</u> (1) Establishes consistency the definition of investigation used by the regional offices and used in the compilation of a person or site's compliance history.</p> <p>(2) Re-defining investigation in compliance history to denote only agency initiated investigations would provide consistency with other types of investigations.</p> <p><u>Cons:</u> Defining "investigation" for Compliance History purposes in a manner that is consistent with the Regional Office's strategic protocol may result in fewer Agency actions being defined as an "investigation"; therefore, under the current mathematical formula, it may reduce the number of investigations in the denominator of a site or person's compliance history calculation thereby resulting in a higher score and a poorer rating.</p> <p><u>Basis:</u> Strategic protocol for investigations.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using the definition of "investigation" contained in the Regional Office Strategic Protocol while incorporating the recommended revised policies, rules, and procedures • Revision to agency policy would be required • Revising agency policy takes approximately three months; assuming initiation in the Fall of 2004, the policy could be implemented by January 2005 • Allocation of additional agency staff will not be required • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • Potential impact to a company's compliance history • This recommendation will potentially impact other agency offices and/or contractors for implementation |

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| Other Alternatives | <p>1) Change the definition of investigation in the agency's strategic protocol to reflect the definition used in the Compliance History context.</p> <p>2) Continue to allow investigations to be defined inconsistently.</p> |
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| Compliance History Components/Definitions | |
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| Issue No. | 3 |
| Key Issue | <p><u>Definition and use of "person" and/or "site" for compliance history purposes:</u></p> <p>A) Should compliance history only be based on a person and not the specific site, vice versa, or both?</p> <p>C) Should compliance history only be based on the current person/operator and not previous persons/operators?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment</p> |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |
| Recommendation | <p>Compliance history should be compiled for both a person (defined as an owner) and a site. It should reflect the environmental record of the current owner and not previous persons or operators.</p> <p>30 TAC § 3.2 (Definitions) and 30 TAC § 60.2(a) (Classifications) would need to be amended to define "Person" as an owner.</p> <p><u>Pros:</u> Provides a more accurate perspective of the current owner's environmental history.</p> <p><u>Cons:</u> Does not provide a complete record of the history at that site for the previous five years.</p> <p><u>Basis:</u> A current owner of a facility should not be held liable for actions taken by previous owner for a specific site.</p> |

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| | <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories for current owners and their respective sites while incorporating the recommended revised policies, rules, and procedures • 30 TAC § 3.2 (Definitions) and 30 TAC § 60.2(a) (Classifications) would need to be amended • Rulemaking takes approximately six to nine months; assuming initiation in the Fall of 2004, the rule could be adopted by May 2005 • Allocation of additional agency staff will not be required • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • Potential impact to a company's compliance history • This recommendation will potentially impact other agency offices and/or contractors for implementation |
| Other Alternatives | Continue to operate under current policy and regulations. Also compile a separate compliance history for the previous owner of a site. |
| Notes | This conflicts with the Classification Subcommittee recommendation that compliance history should only be based on a site and not include person. |

| Compliance History Components/Definitions | |
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| Issue No. | 3 |
| Key Issue | <p><u>Definition and use of "person" and/or "site" for compliance history purposes:</u></p> <p>B) Should compliance history only be based on the operator of a specific site?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment</p> |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |
| Recommendation | <p>A compliance history should not only be compiled for the operator of a specific site; it should be compiled for the owner and the site itself. In this case, owner and operator are the same. Please see note below.</p> <p><u>30 TAC § 3.2 (Definitions) and 30 TAC § 60.2(a) (Classifications) would need to be amended to define "operator" as an owner.</u></p> <p><u>Pros:</u> The owner should be accountable for environmental compliance at the site. <u>Cons:</u> The site's owner may not have knowledge of day-to-day activities at the site like the operator would.</p> <p><u>Basis:</u> The owner of a facility is legally responsible and has liability for previous actions occurring at the site upon purchase.</p> |

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| | <u>Implementation Impacts:</u> <ul style="list-style-type: none"> • Proceed developing compliance histories for current owners and their respective sites while identifying owner as operator; incorporate the recommended revised policies, rules, and procedures • 30 TAC § 3.2 (Definitions) and 30 TAC § 60.2(a) (Classifications) would need to be amended • Rulemaking takes approximately six to nine months; assuming initiation in the Fall of 2004, the rule could be adopted by May 2005 • Allocation of additional agency staff will not be required • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • Potential impact to a company's compliance history • This recommendation will potentially impact other agency offices and/or contractors for implementation |
| Other Alternatives | Develop a history based on the operator since the operator has direct knowledge of and the ability to affect day-to-day activities. |
| Notes | This recommendation would not be consistent if the agency determines to only classify sites. In addition, an option would be to develop three ratings; for the owner, operator, and site. |

| Compliance History Components/Definitions | |
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| Issue No. | 3 |
| Key Issue | <u>Definition and use of "person" and/or "site" for compliance history purposes:</u> |
| | D) Should compliance history include the history of parent companies, subsidiaries, and/or sister companies? |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |

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| Recommendation | <p>The compliance history should not include histories of parent companies, subsidiaries, and related companies.</p> <p><u>No policy or regulation changes are required.</u></p> <p><u>Pros:</u> This would allow a site to be rated on its own merit and not that of other related companies. In addition, the integrity of data compiled on other related facilities cannot be assured. Resources would be strained if the histories of the other facilities had to be compiled (i.e. ExxonMobil would require extensive research and time in order to develop a history for each station, plant, etc. owned by its parent company in the U.S.)</p> <p><u>Cons:</u> Would prevent the agency from being apprized of a recurring pattern of noncompliance of a particular parent company (i.e. a company's environmental record outside of Texas would not be considered).</p> <p><u>Basis:</u> National and international companies do not necessarily affect the daily activities of their subsidiaries. The compliance history of one facility may not reflect the history for all facilities operating under the same parent company nor other sister companies. In addition, reviewing all related companies would require significant staff resources.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories based on person and site only, using the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| Other Alternatives | <ol style="list-style-type: none"> 1. Consider histories of related companies on a case-by-case basis. 2. Always consider histories of related companies. |

| Compliance History Components/Definitions | |
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| Issue No. | 3 |
| Key Issue | <p><u>Definition and use of "person" and/or "site" for compliance history purposes:</u></p> <p>E) Should compliance history be established for co-permittees together? If so, should the TCEQ take into consideration their divided responsibilities?</p> |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |

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| Recommendation | <p>A compliance history should not be established for co-permittees together if there is legally a way to distinguish each entity separately. A history for each person permitted would be compiled. If a legal separation could not be established or determined, a combined history for both would be developed.</p> <p><u>30 TAC ch. 60 and compliance history policy would need to be amended.</u></p> <p><u>Pros:</u> Each entity would be held liable only for activities occurring at their respective sites.</p> <p><u>Cons:</u> One entity may have operational control over another entity's site in which case both permeates should be included on one history.</p> <p><u>Basis:</u> It would be consistent with the development of histories for individual owners of other sites.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories based on each permittee of a site, incorporating the recommended revised policies, rules, and procedures • 30 TAC § 3.2 (Definitions) and 30 TAC § 60.2(a) (Classifications) would need to be amended to define "co-permittee" <p>Rulemaking takes approximately six to nine months; assuming initiation in the Fall of 2004, the rule could be adopted by May 2005</p> <ul style="list-style-type: none"> • Allocation of additional agency staff will not be required • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • Potential impact to a co-permittee's compliance history • This recommendation will potentially impact other agency offices and/or contractors for implementation |
| Other Alternatives | Consider an all inclusive history for co-permittees on a case-by-case basis. This could, however, allow for two entities with a bad compliance history to construct a new facility with few consequences simply through forming a partnership. |

| Compliance History Components/Definitions | |
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| Issue No. | 3 |
| Key Issue | <p><u>Definition and use of "person" and/or "site" for compliance history purposes:</u></p> <p>F) How should a site be defined, including whether the site is currently in operation and no longer has a permit?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment</p> |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |

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| Recommendation | <p>"Site" is and should continue to be defined as stated in 30 TAC § 60.2. Consideration should not be given to whether the site is currently in operation and/or no longer has a permit.</p> <p>No policy or regulation changes are required.</p> <p><u>Pros:</u> Allows portable facilities to continue having their own history compiled for each location their units have been stationed. In addition, even if a site is no longer in operation a history would continue to be maintained for the person or owner.</p> <p><u>Cons:</u> Continuing to compile a history on a site which is no longer in operation would negatively impact the current person/owner rating.</p> |
| | <p><u>Basis:</u> Whether a site is currently operating and/or has a permit does not impact its history over the previous 5-year period.</p> |
| | <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using the current definition of "site" while incorporating the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
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| Other Alternatives | Do not consider the history of a site if equipment is no longer in operation. |

| Compliance History Components/Definitions | |
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| Issue No. | 4 |
| Key Issue | <p><u>Consideration of positive components:</u></p> <p>A) Should the TCEQ refocus components on compliance and not on non-compliance?</p> |
| | <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment</p> |
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| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |

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| Recommendation | TCEQ should continue to focus on a company's history of non-compliance. There are other criteria in the compilation of compliance history that allow for factoring in positive elements. |
| | <u>No policy or regulation changes are required.</u> |
| | <u>Pros:</u> Demonstrates a company's ability to comply with environmental regulations. <u>Cons:</u> Only focuses on instances of noncompliance instead of all instances of compliance. |
| | <u>Basis:</u> A compliance history is an environmental record based on the performance of an entity. |
| Other Alternatives | <u>Implementation Impacts:</u> |
| | <ul style="list-style-type: none"> • Proceed developing compliance histories based on non-compliance using the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
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| Compliance History Components/Definitions | |
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| Issue No. | 4 |
| Key Issue | <u>Consideration of positive components:</u> |
| | B) Should positive components be included in calculating compliance history? If so, should the TCEQ consider attempts to comply, compliance, over-compliance, supplemental environmental projects, voluntary programs, or continuous improvement? |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |

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| Recommendation | <p>Limited positive components such as over-compliance, voluntary programs, and continuous improvements (i.e. approved Environmental Management Systems) should be included in the compilation of a compliance history. However, attempts to comply, compliance, and supplemental environmental projects ("SEPs") should not be considered.</p> <p>No policy or regulation changes are required.</p> <p><u>Pros:</u> Provides an incentive for a company to improve its compliance rating; provides a balanced perspective of site activities.</p> <p><u>Cons:</u> It would prevent a company from receiving credit for correcting violations that are required by rule or statute.</p> <p><u>Basis:</u> Positive components reflect a company's willingness to improve the environment while minimizing its impact on it.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using limited positive components and the recommended revised policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| Other Alternatives | Don't include positive components in compliance history. |
| Notes | Investigations also count as positive components since they improve a company's rating. |

| Compliance History Components/Definitions | |
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| Issue No. | 5 |
| Key Issue | <p><u>Types of enforcement actions considered in compliance history:</u></p> <p>A) Should only final enforcement actions be included in compliance history?</p> <p>B) Should all civil, administrative, and criminal actions brought by the TCEQ or other government entities be included in compliance history, including those by the permitted entity that occur outside of Texas? If so, should findings and 1660 orders be included?</p> <p>C) Should all consent orders and agreements count as components in compliance history?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule; Public Comment</p> |

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| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, EIC, Penalty Policy |
| Recommendation | <p>All final enforcement actions, including consent orders, agreements, civil, administrative (1660-styled orders and Findings orders which include findings of fact and conclusions of law), and criminal actions brought by the TCEQ and other Texas government entities (assuming their data is consistent and reliable), should count as components in compliance history. Actions occurring outside of the state should not be considered.</p> <p>30 TAC § 60.1(c)(3) and TWC § 5.753(b)(3) would need to be repealed.</p> <p><u>Pros:</u> Including all final enforcement actions would provide a complete picture of a company's ability to comply with state/federal environmental rules and regulations. Omitting actions occurring outside of the state would provide for consistency in the application of compliance history rules. Since each state may define orders and agreements differently, including terms and conditions contained in these agreements/orders, the potential for conflict with the application of Texas' compliance history rules/definitions could exist. In addition, it would be difficult to determine if the information supplied by other states is consistent, reliable, or even available.</p> <p><u>Cons:</u> Excluding actions initiated by other state agencies outside of Texas would prevent the agency from determining a company's true environmental record.</p> <p><u>Basis:</u> Currently, all state-issued enforcement orders and agreements are considered part of a company's compliance history. Although actions taken by other states are included, when available, these are not factored into the calculation for a site's rating.</p> |

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| | <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using enforcement actions brought by the TCEQ and other Texas government entities, incorporating the recommended revised policies, rules, and procedures • 30 TAC § 60.1(c)(3) and TWC § 5.753(b)(3) would need to be repealed to remove the reference of violations in other states • Statutory changes generally are not finally adopted until June following the regular legislative session, when the governor signs or does not veto approved legislation. Since rulemaking will be required as well, an additional six to nine months should be allotted for the adoption of the rule • Revise current compliance history policy to incorporate the removal of this component • Allocation of additional agency staff will not be required • Revising agency policy will take approximately three months • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • No additional impact to a company's compliance history since this component is currently not considered in a site's rating; it is supplied for informational purposes only • This recommendation will impact other agency offices and/or contractors for implementation |
| Other Alternatives | Only include specific types of enforcement actions (i.e. civil and administrative; only Findings orders and judgments; no criminal actions). Continue including actions from other states. |

| Compliance History Components/Definitions | |
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| Issue No. | 6 |
| Key Issue | <p><u>Nature and quality of the data used to evaluate compliance history:</u></p> <p>Does the TCEQ's record keeping system maintain accurate and complete historical and current records to effectively determine each component of a compliance history?</p> |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, EIC, Penalty Policy |

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| Recommendation | <p>TCEQ's current record keeping system does not completely reflect all of a company's compliance history related information. Records containing documentation, both electronic and paper, need to be audited to ensure accuracy. Also, recommend incorporating this issue into the Compliance History Classification Committee's Key Issue 7(A) - Data accuracy and retention.</p> <p><u>Potential for policy changes.</u></p> <p><u>Pros:</u> Auditing TCEQ records would ensure consistency of a company's historical activity.</p> <p><u>Cons:</u> Agency resources may be limited in completing this ongoing project, therefore, companies would continue to be held accountable for inaccurate or incomplete information. For compliance history purposes, insufficient records would be scored, accordingly.</p> <p><u>Basis:</u> There is currently a protocol for entering data into the Consolidated Compliance and Enforcement Database System (CCEDS). State and agency standards for records retention also exist. In addition, 30 TAC ch. 60 and TWC § 5.753 allow a company to contest inaccurate information contained in a compliance history.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using TCEQ's current record keeping system while incorporating the recommended revised policies, rules, and procedures • Potential revision to agency policy • Revising agency policy takes approximately three months; assuming initiation in the Fall of 2004, the policy could be implemented by January 2005 • Allocation of additional agency staff may be required • Potential allocation of additional funds to modify CCEDS, Central Registry, and the criteria used to run compliance history reports • Potential impact to a company's compliance history depending on additional information discovered through auditing of records • This recommendation will potentially impact other agency offices and/or contractors for implementation |
| Other Alternatives | Outsource the agency's record keeping system. |

| Compliance History Components/Definitions | |
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| Issue No. | 7 |
| Key Issue | <p><u>Other issues related to compliance history components/definitions:</u></p> <p>A) Should a person's or facility's compliance history be based only upon activities or violations that involve direct, immediate or impending effects to human health and the environment? (Not paper violations)</p> |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |
| Recommendation | <p>Compliance history should include both physical effects to human health/environment, as well as, clerical/paper type violations.</p> <p>No policy or regulation changes are required.</p> <p><u>Pros:</u> Provides a more accurate perspective of a company's environmental history with respect to compliance with all regulations.</p> <p><u>Cons:</u> May not be able to quantify an immediate or impending impact to the environment based on paperwork violations.</p> |
| | <p><u>Basis:</u> Paper violations (i.e. records, reports, etc.) may demonstrate a pattern of equipment failures and noncompliance.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories which include both violations involving physical effects to human health/environment and are clerical in nature while incorporating the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| Other Alternatives | <p>Only include activities/violations which have a physical impact on the environment.</p> <p>Only include Category A violations contained in the Enforcement Initiation Criteria.</p> <p>Only include violations based on the risk they pose on the environment.</p> |
| Notes | <p>Example of physical effect of a violation would include unauthorized emissions or discharges to the environment.</p> <p>Example of paper type violation would include failure to keep required records on site.</p> |

| Compliance History Components/Definitions | |
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| Issue No. | 7 |
| Key Issue | <p><u>Other issues related to compliance history components/definitions:</u></p> <p>B) Should a person's or facility's intent in committing a violation be a component in the computation of a person's or facility's compliance history?</p> <p><u>Basis:</u> Staff Input and Review of Current Rule, Public Comment</p> |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |
| Recommendation | <p>A person's or facility's intent in committing a violation would be difficult to establish. A component currently exists for facilities that meet the "repeat violator" definition. Recommend continue compiling compliance history utilizing repeat violator definition.</p> <p>No policy or regulation changes are required.</p> <p><u>Pros:</u> Including a person/facility's "intent" in committing a violation in the form of "repeat violator" would distinguish those respondents which have recurring problems from others who are able to come into and stay in compliance with environmental regulations.</p> <p><u>Cons:</u> A person/facility (i.e. small business) may not have the resources to fix an ongoing violation which would result in the "repeat violator" classification.</p> <p><u>Basis:</u> Including repeat violators into compliance history assists in establishing a pattern of noncompliance and, thus, allows the agency to investigate a respondent's activities more thoroughly. In addition, the agency has historically used "strict liability" as its basis for developing enforcement actions.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance based on repeat violator definition while incorporating the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| Other Alternatives | Define "intent" and include as a separate component of compliance history. |
| Notes | Recommend the Classification subcommittee incorporate this issue. |

| Compliance History Components/Definitions | |
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| Issue No. | 7 |
| Key Issue | <u>Other issues related to compliance history components/definitions:</u> |
| | C) Should a violation which is the result of an Act of God count towards a person's or facility's compliance history? |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |
| Recommendation | A violation which is the result of an Act of God currently is not and should not count towards a compliance history. |
| | <u>No policy or regulation changes are required.</u> |
| | <u>Pros:</u> Prevents a company from being held liable for conditions beyond their control. |
| | <u>Cons:</u> None |
| | <u>Basis:</u> Compliance history should be based on activities for which a company is directly involved in and physically liable for. |
| | <u>Implementation Impacts:</u> <ul style="list-style-type: none"> • Proceed developing compliance histories using the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| Other Alternatives | None. |
| Notes | Act of God is not currently defined. |

| Compliance History Components/Definitions | |
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| Issue No. | 7 |
| Key Issue | <p><u>Other issues related to compliance history components/definitions:</u></p> <p>D) Should a person's or facility's compliance history summary include a brief narrative of their violations, enforcement orders, and any outstanding enforcement issues?</p> |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |
| Recommendation | <p>A brief narrative of a facility's violations, etc. should not be included in compliance history.</p> <p>No policy or regulation changes are required.</p> <p><u>Pros:</u> A company's environmental record is already contained in the compliance history; a narrative would be somewhat redundant and would be resource intensive to produce. In addition, it would be difficult to ensure consistency across the agency.</p> <p><u>Cons:</u> Would potentially require more research on an inquirer's part to review all of the information contained in the history; a brief narrative would be more accessible to the public.</p> |
| | <u>Basis:</u> Detailed information regarding NOVs, orders, and other issues are contained in a facility's compliance file is available for review in Central Records. In addition, this approach (developing a narrative) has been taken in the past and was not utilized. |
| | <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories based on the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
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| Other Alternatives | Include a brief narrative as part of the compliance history. |

| Compliance History Components/Definitions | |
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| Issue No. | 7 |
| Key Issue | <u>Other issues related to compliance history components/definitions:</u> |
| | E) Should any past violations attributed to a facility or person be included in a person's or facility's compliance history? |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |
| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |
| Recommendation | Recommend continuing the compliance history review period to be 5 years prior to the initiation of an agency action (i.e. permit, enforcement). |
| | No policy or regulation changes are required. |
| | <u>Pros:</u> Ensures consistency and integrity of data contained in the agency's records and databases. A five year period provides an adequate perspective of a company's ability to comply with environmental regulations. |
| | <u>Cons:</u> Would not allow for violations occurring over a protracted period of time to be reviewed or considered. |
| | <u>Basis:</u> A specific review period needs to be established for compliance history to ensure current violations are being adequately addressed. |
| Other Alternatives | <u>Implementation Impacts:</u> |
| | <ul style="list-style-type: none"> • Proceed developing compliance histories using the 5 year period while incorporating the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |

| Compliance History Components/Definitions | |
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| Issue No. | 7 |
| Key Issue | <u>Other issues related to compliance history components/definitions:</u> |
| | F) Should a site's complexity be a factor or should the number of components/opportunities to violate be a component in determining compliance history? |
| | <u>Basis:</u> Staff Input and Review of Current Rule, Public Comment |

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| Other Subcommittees Reviewing Issue | Compliance History Classification, Compliance History Use, Enforcement Process, Penalty Policy |
| Recommendation | <p>No. A site's complexity is not required to be considered by the compliance history statutes. It is difficult to establish and utilize as a component of compliance history. However, the compliance history classification formula does consider number of inspections at a site, which in some cases may be related to a facility's size and complexity (e.g., under PPG agreements, federal major sources in the air program are required to be inspected on a specific schedule.)</p> <p>No policy or regulation changes are required.</p> <p><u>Pros:</u> Would prevent the necessity for more resources to make a "complexity" determination for each site; would also prevent inconsistencies in the interpretation of "complex" within the different programs of the agency.</p> <p><u>Cons:</u> Would not reflect the amount of resources a company expends in maintaining compliance with environmental regulations which impact its specific type of industry or number of emission/discharge points.</p> <p><u>Basis:</u> A site's complexity or number of components does not necessarily reflect its ability to comply with environmental regulations.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • Proceed developing compliance histories using the recommended policies, rules, and procedures • Allocation of additional funds or agency staff will not be required • No revisions are required to the compliance history policy, rules, or statutes currently in place for this key issue • Implementation can occur immediately • No additional impact to companies or other agency offices |
| Other Alternatives | Define what is "complex" and include as a component. |
| Notes | Recommend the Classification subcommittee incorporate this issue. |